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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,690	02/23/2007	Jochen Beck	19345	2065
272 7590 03/04/2009 SCULLY, SCOTT, MURPHY & PRESSER, P.C. 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			EXAMINER LOPEZ, FRANK	
			ART UNIT 3745	PAPER NUMBER
			MAIL DATE 03/04/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/564,690	Applicant(s) BECK ET AL.	
	Examiner F. Daniel Lopez	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/11/06 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/11/06</u> . | 6) <input type="checkbox"/> Other: ____. |

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show how retracting the piston rod of piston 62 and extending the piston rod of piston 65 will rotate the shovel or boom, since it is unclear how the piston rods and cylinders are connected to the shovel or the boom (they can't be connected to the shovel and boom conventionally, since conventionally both rods extend or retract together) as described in the specification (e.g. paragraph bridging pages 16-17 or 24 and 25, respectively). Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: it is unclear how the piston rods and cylinders are connected to the shovel or boom, (see objection to the drawings).

Claim Rejections - 35 USC § 112

Claims 1-40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how the piston rods and cylinders are connected to the shovel or boom, (see objection to the drawings).

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claims 2, 3 and 5-40 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 does not further limit claim 1 and is confusing. The "first adjusting chamber" (line 3) appears to be the same as the "piston rod side adjusting chamber" of claim 1 line 16 and the "other second adjusting chamber" (line 5) appears to be the same as the piston side adjusting chamber of claim 1 line 18.

Claim 3 does not further limit claim 1 and is confusing. The "two boom side adjusting chambers" (line 3) are the same as the piston side adjusting chamber of the second cylinder and the piston rod side adjusting chamber of the first cylinder (defined by claim 1 line 20-21) and the "two vehicle body side adjusting chambers" (line 4-5) are the same as the piston side adjusting chamber of the first cylinder and the piston rod side adjusting chamber of the second cylinder (defined by claim 1 line 23-24).

In claim 7 line 3 and 4-5 "the discharge direction", line 5 "the second pump" and line 6 "the tilting angle" have no antecedent bases.

In claim 8 line 3 "the discharge volume", line 4-5 "the discharge volume discharged at the first and second connection of the second pump" and line 6 "the tilting angle" have no antecedent bases.

In claim 9 line 3 “the adjustment of the discharging device of the second hydraulic pump” and line 6-7 “the direction of rotation” have no antecedent basis. In claim 9 line 7 “the adjusting pressure” appears to be the same as “the discharge volume” of claim 8 line 3, and so should be changed.

In claim 14 line 6 “the first fed pump” has no antecedent basis. In claim 14 lines 14 “a first adjusting device” and line 16 “a second adjusting device” should be --11 the first adjusting device-- and --the second adjusting device--, to refer to that of lines 10-11 and 13, respectively.

In claim 15 line 3 “the discharge direction” has no antecedent basis. In claim 15 line 4 “the discharge direction” is confusing, since it should be “the direction of rotation” to agree with claim 9 line 6-7.

In claim 16 and 17 line 4 “the first feed pump” and line 5 (line 8 for claim 17) “the second feed pump” have no antecedent basis. Suggest that claim 16 depend from claim 14. In claim 16 line 5-6 “in each case of a common or in each case separate machine” is confusing as to what is meant. In claim 16 line 6 “in particular” is confusing, because it is unclear whether the limitation following the phrase is intended as a limitation or not.

In claim 19 line 3-4 “the second electric adjusting signal” and 5-6 “the fourth electric adjusting signal” have no antecedent basis.

In claim 20 line 3 “the second adjusting pressure” and 4-5 “the fourth adjusting pressure” have no antecedent basis.

In claim 21 line 4-5 “the boom” has no antecedent basis.

In claim 23 line 3 “the speed” and line 4 “the input” have no antecedent basis.

Claims 4-6, 24-26, 31-34, 36-38 and 40 have similar limitations to claims 1-3 and 7-9, 14-17, 29-31 and 33, respectively, and therefore claims 5, 6, 24-26, 31-34, 36-38 and 40 have the same problems as discussed above.

Claims not specifically mentioned are indefinite, since they depend from one of the above claims. Due to the multiplicity of claims, care should be taken to eliminate all 112 problems, as the examiner might have missed some of the problems.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lech et al teaches that the cylinder (e.g. 64, 66) can be connected to the body of the vehicle and Aril et al teaches that the piston (of cylinder 11) can be connected to the body of the vehicle. MacLeod refers to a shovel tilted by first and second shoveling cylinders (54, 56) having piston side chambers connected to rod side chambers of the other cylinder, and connected to first and second connections of an adjustable pump (72). One of ordinary skill would expect that either the cylinders or the pistons would both be connected to the body of MacLeod, but not one of each, since the body and the shovel would not be able to be made symmetrical, thereby entailing further work and cost.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM -4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez
Primary Examiner
Art Unit 3745
March 5, 2009